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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,768	03/24/2004	Ralph Fritz Zwimmann	060960-5014-US	7926
28977	7590	04/05/2006	EXAMINER	
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER

3733

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/809,768	<b>Applicant(s)</b> ZWIRNMANN ET AL.	
	<b>Examiner</b> Richard R. Shaffer	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 4-10, 14, 15, 23, 25 and 27-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11-13, 16-22 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/8/2005</u> .                                                            | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, Implant Species I (Figure 3A), and Tack/Screw Species (Figure 16) in the reply filed on March 8<sup>th</sup>, 2006 is acknowledged. Applicants assert claims 1-3, 11-13, 16-22, 24, and 26 read on the elected group and species. The examiner agrees.

Claims 4-10, 14, 15, 23, 25, and 27-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 8<sup>th</sup>, 2006.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11-13, 16, 17, 20-22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Eisermann et al (US Patent 6,342,055).

Eisermann et al disclose a an straight elongate bone plate (Figure 1) comprising: a top surface (90) with an elongate U-shaped/channel recess (26); bottom bone-contacting surface (28); at least two countersunk fastener holes (18) located in the recess (26); the countersunk holes having a first inclined wall (34) and a second inclined

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wall (36); and the corner of the plate between edge (24) and top surface (90) is chamfered (see Figure 5).

In regard to claims 12 and 13, applicant did not specify how the angles were being measured, thus according to "an" axis and method for measuring angles, one could arrive at the limitations set forth in claims 12 and 13.

Claims 1-3, 11-13, and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Happonen et al (US Patent Application Publication 2002/0165545).

Happonen et al discloses a straight elongated bone plate (Figure 1) comprising: a top surface (9); bottom surface (10); at least two countersunk fastener holes (3); an elongated U-shaped recess (7); side edge chamfers at the corners of the plate (see Figure 2); and the plate being made of a resorbable material (Page 2, 0019) such as L-lactide, D-lactide, D,L-lactide, or a cyclic ester (such as glycolide) copolymerized with lactide.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisermann et al in view of Cooper et al (US Patent 6,093,201).

Eisermann et al discloses all of the claimed limitations except for the plate being made of a resorbable material and the material selected from the group consisting of

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70/30 poly (L, D/L-lactide) and 85/15 poly (L-lactide-co-glycolide). Cooper et al teaches (Column 1, Lines 13 through Column 2, Line 5 and Column 6, Line 51 through Column 7, Line 45) the use of resorbable materials for bone plates 85/15 poly (L-lactide-co-glycolide) copolymer for a resorbable bone plate. Resorbable plates allow bone tissue to replace the material of the plate avoiding subsequent surgery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the plate of Eisermann et al to be made of a resorbable material to allow the body to generate natural tissue and to avoid subsequent surgery. It would have been further a mere design choice as to what material would be used as taught by Cooper et al including 85/15 poly (L-lactide-co-glycolide) for a resorbable plate. Cooper et al disclose a vast plurality of materials suitable for resorbable plates.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday during (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Richard Shaffer*

Richard Shaffer  
March 25<sup>th</sup>, 2006

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER